



March 14, 2011

Secretary Ken Salazar  
U.S. Department of the Interior  
Attn: Ms. Mary Milam  
1849 C Street NW, MS 4141 – MIB  
Washington, DC 20240  
[consultation@doi.gov](mailto:consultation@doi.gov)

**RE: Comments on Draft Tribal Consultation Policy**

Dear Secretary Salazar:

I am writing to you on behalf of Sealaska Corporation, an Alaska Native Regional Corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) and its 20,000+ Tribal Member Shareholders. Sealaska Corporation is the Regional Corporation for Southeast Alaska, the traditional homeland of the Tlingit, Haida and Tsimshian Indians. Sealaska Corporation would like to comment on the Draft Tribal Consultation Policy, despite the fact that your draft document states that a subsequent document will be disseminated that addresses ANCSA corporation consultation as a separate matter. In fact, that is exactly the basis for our comments on this Draft Tribal Consultation Policy.

**Background on Consultation with Alaska Native Corporations**

Executive Order No. 13175 directs all federal agencies to ensure consultation and coordination with Indian Tribal Governments on those federal agency actions that will have an impact on tribal governments. Congress determined that the consultation policy should include ANCSA corporations. The Consolidated Appropriations Act for Fiscal Year 2004 directed the Office of Management and Budget (OMB) to consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175. See Pub. L. No. 108-199, Division H, Section 161. Similarly, the Consolidated Appropriations Act for Fiscal Year 2005 requires “all Federal agencies”, in addition to the OMB, to consult with Alaska Native Corporations pursuant to Executive Order 13175. See Pub. L. No. 108-447, Division H, Title V, Section 518. Accordingly, all Federal agencies are required to consult and coordinate with Alaska Native Corporations on the same basis as Indian Tribes in the development of Federal policies that would impact such Native Corporations and their tribal member shareholders.

The statutory language requiring the federal agencies to consult with Alaska Native Corporations “on the same basis as Indian Tribes” under Executive Order No. 13175 is the reason we are commenting on this Draft Tribal Consultation Policy. The Draft Policy states that as a “supplemental” matter, the “the Department shall develop a policy for consultation with Alaska Native Corporations.” The statutory language would appear to negate a separate process for Alaska Native Corporations, as the Department is intending to do in this instance.

### **A Single Process is Preferred and More Efficient**

Maintaining a single process will work because where a Departmental action does not impact Alaska Native Corporation interests, but rather purely Tribal Governmental interests, we will not comment unless it is evident that an ANCSA interest will be impacted. For example, Departmental actions could impact ANCSA implementation, ANCA Corporation lands, or the Department’s programs that allow for ANCSA Corporation participation. Also, there are instances where tribal issues are addressed by the Department where ANCSA Corporation comments are entirely appropriate. For example, any Interior Department actions that implicate subsistence hunting and fishing rights are a priority for most, if not all, Alaska Native Corporations. ANILCA subsistence rights arose from an amendment to ANCSA and can relate to the use of ANCSA lands.

We conclude that a separate process will be inefficient and stretch already limited Interior Department resources, as well as the resources of tribal governments and ANCSA corporations. Having two separate processes could be more difficult to manage and could result in repeated consultation activities by the agency on the same agency action. Given the several examples above where both a tribal government and an ANCSA corporation may have an interest, a two-part process would require the tribal government and the ANCSA Corporation to attend to consultations on the same subject matter. This is likely not the best use of agency resources and will create delays in agency action. Additionally, a dual process could create the perception that the ANCSA Corporation consultation or Tribal consultation will take a “back seat” to the other. At this juncture, transparency and avoidance of the appearance that one group is gaining superior consultation and influence over the other is critical. The Tribes have a clear government-to-government relationship with the Department; but ANCSA Corporation consultation is statutorily equal under law and should not be more limited or provided a lower priority within the agency. This would not be the appropriate result, and would not provide for consultation “on the same basis as Indian tribes” and, as a result, our Tribal member shareholders could be disadvantaged and our Native lands and resources impacted.

We are not stating these concerns as a presumption that ANCSA Corporation Consultation is more important or just as important in all instances where the agency is seeking tribal consultation. Clearly, there are instances where tribal government input is paramount because the agency action has purely tribal government implications. At the same time, it is the Congress that determined that Native lands in Alaska, and the associated resources, would be conveyed to Alaska Native Corporations pursuant to ANCSA; and also that ANCSA Corporations should participate in some programs established for Indian Tribes. Accordingly, ANCSA Corporations must be consulted on Interior Department actions that could impact ANCSA Corporation lands and resources or programs in which ANCSA Corporations can participate, and programs that benefit our Tribal member shareholders. Simply stated, there are many issues addressed by the Department that have broad Alaska Native implications that require comments by all Alaska Native tribes and tribal institutions.

### **Changes to the Draft Policy that Would be Required**

If a single process is used for Tribal and Alaska Native Corporation consultation, some changes would have to be made to the Draft Policy. First, the Definition of “Indian Tribe” would have to be adjusted to include Alaska Native Corporations. We might suggest using the widely-used definition included in the Indian Self Determination and Education Assistance Act, at 25 U.S.C. 450b(d):

“(d) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;”.

This definition is broadly used to ensure Alaska Native Corporation participation in many federal programs.

The Policy may have to be adjusted throughout to reference Alaska Natives and/or Alaska Native Corporations, where appropriate.

### **General Comments on the Draft Policy**

Generally, notwithstanding our comments above, we agree with the intent of the Draft Policy for Tribal Consultation. We appreciate the consultation in stages, whereby meaningful consultation occurs at all stages of agency action – Initial

Planning stage (prior to development of draft regulations, actions, and policies); Proposal Development Stage (collaboration and communication during the development of the rule, action, policy); and Implementation of Final Action (communication on the final agency action). We have advocated for this type of process in all consultation meetings that we have attended, and we believe that this allows for “meaningful” tribal consultation.

We also believe that the Department must make every effort to maintain a current Tribal and ANCSA Corporation database for the appropriate Tribal and institutional contacts at each entity to ensure that consultation requests reach the appropriate contact and receive the appropriate level of attention. We agree with the Draft policy stating that all communication mediums should be used to communicate with tribes and Alaska Native corporations to ensure consultation and cooperation.

### **Closing Comments**

In closing, we do hope that you will consider a single process for Tribal and ANCSA Corporation consultation for both efficiency and to ensure that ANCSA Corporations also have an opportunity to comment, where appropriate, on Interior Department actions that have broad Alaska Native and tribal implications. We also believe that this is the type or process that is required by law.

We greatly appreciate your time and consideration of these comments. Please do not hesitate to contact me ([chris.mcneil@sealaska.com](mailto:chris.mcneil@sealaska.com)) or Jaeleen Araujo ([jaeleen.araujo@sealaska.com](mailto:jaeleen.araujo@sealaska.com); 907-586-9130), our Vice-President and General Counsel, on this matter.

Sincerely,

SEALASKA CORPORATION

A handwritten signature in black ink, appearing to read "Chris McNeil Jr.", written in a cursive style.

Chris E. McNeil, Jr.  
President and CEO